

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES MURPHY,

Plaintiff,

-v-

FOGO DE CHAO 53RD STREET, NEW YORK LLC.

Defendant.

19 Civ. 10320 (PAE) (OTW)

ORDER

PAUL A. ENGELMAYER, District Judge:

On February 3, 2020, defendant Fogo de Chao 53rd Street, New York LLC (“Fogo de Chao”) moved to dismiss plaintiff James Murphy’s initial complaint in this case. Dkt. 18. On February 4, 2020, the Court referred the motion to the Honorable Ona T. Wang, United States Magistrate Judge, for a report and recommendation. Dkt. 20. On May 13, 2020, Murphy filed an amended complaint. Dkt. 32. On May 27, 2022, Fogo de Chao filed its motion to dismiss the amended complaint. Dkt. 32. On July 21, 2020, the Court stayed the case and denied the motion to dismiss without prejudice in light pending a decision from the Second Circuit in similar cases. Dkt. 39.


On June 8, 2022, the parties filed a joint letter alerting the Court that the Second Circuit has issued a decision in *Calcano, et al. v. Swarovski North America Ltd., et al.*, No. 20-1552. Dkt. 49. The Court directs plaintiff’s request to file a Second Amended Complaint, which shall be filed by July 13, 2022. If plaintiff does amend, by August 3, 2022, defendant shall: (1) file an

answer; (2) file a new motion to dismiss; or (3) submit a letter to the Court, copying plaintiff, stating that it relies on the previously filed motion to dismiss.¹

It is further ORDERED that if no amended complaint is filed, plaintiff shall serve any opposition to the motion to dismiss by July 13, 2022. Defendant's reply, if any, shall be served by July 27, 2022.

The Court will determine later, after receipt of plaintiff's anticipated brief opposing a motion to dismiss the current or amended complaint, whether to schedule oral argument.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: June 14, 2022
New York, New York

¹ If defendant files a new motion to dismiss or relies on their previous motion, plaintiff's opposition will be due 14 days thereafter, and defendant's reply, if any, will be due seven days after that.